THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

Appellate Case No. 2016-000471

Maria Allwin ..... Appellant,

v.

Russ Cooper Homes, Inc., Buffington Homes, L.P., and Shope Reno Wharton, ... Defendants,

Of Whom, Russ Cooper Associates, Inc. and Shope Reno Warton are the ..... Respondents.

Buffington Homes, L.P., ... Third-Party Plaintiff,

v.

Albrecht Environmental, Inc., All Points Construction, Inc., Patriots Drywall, Inc., Picquet Roofing, Inc., Sprayseal Foam Insulation, and Tischler Und Sohn (USA) Limited, ... Third-Party Defendants

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

The undersigned hereby certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals on April 19, 2019.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals Err In Disregarding Applicable Precedent In Affirming the Trial Court's Grant of Summary Judgment?

II. Did The Court Of Appeals Improperly Apply the Law of Statute of Limitations In Affirming the Trial Court's Grant of Summary Judgement?

III. Did the Court of Appeals, Like the Trail court, Fail to Cosnider the facts Presented in the Light Most favorable to Allwin?

STATEMENT OF THE CASE

This appeal arises from the trial court's order granting summary judgment to the defendants based on the statute of limitations. On August 5, 2013, Maria Allwin, a homeowner, instituted this construction defect lawsuit against general contractor Russ Cooper Associates, Inc. ("Russ Cooper" or "Contractor") and on October 8, 2014, added architect Shope Reno Wharton ("Shope Reno" or "Architect") alleging negligence, gross negligence and breach of warranty causes of action resulting from the design and construction of Maria Allwin's 11,000 square foot oceanfront home located at 133 Flyway Drive, Kiawah Island, South Carolina (the "Home") (Amended Complaint). Maria Allwin sought damages for latent and previously undiscoverable deficiencies, decay and rot. (Amended Complaint ¶ 7). Specifically, she asserted a claim for damages related to conditions which were discovered after 2011 (Allwin Affidavit ¶ 8). She did not make a claim for damages for conditions that were discovered and repaired years before 2011 (Allwin Affidavit ¶17).

There is an undisputed history of defects and problems with the Allwin home, going back to the 1990s. The testimony is clear that those defects were discovered at various times by various people. As they were reported to the Allwins, decisions were made about the repair of those problems over the course of many years. Over those years, Allwin paid approximately $2,000,000 to effect various repairs (R. pp. 000177-000181). She is not bringing, and has never brought, a claim to seek reimbursement of those repair costs (Allwin Affidavit ¶6). In 2011, faced with more evidence of repairs, Allwin hired Ross Clements to do a thorough investigation of her home which revealed extensive problems which were not previously known to Allwin. She testified as to that fact by affidavit (Allwin Affidavit ¶ 8). Clements also submitted an affidavit outlining the defects he discovered through his removal of the entire building envelope at the Allwin home. He opined that those conditions could never have been known or discovered except by a complete declad of the home, which had never previously occurred (Ross Clements Affidavit ¶ 16). Russ Cooper, the contractor defendant, testified that the declad of a home to discover problems would have been extreme, meaning not the exercise of ordinary diligence. Allwin testified that before allowing Clements to declad the home in 2011, which led to the discovery of the defects, Shope Reno, the architect defendant, advised her that their review of the home indicated that a total declad was not necessary, (Allwin Affidavit ¶ 12) meaning that Allwin still would not know of all of the defects Clements ultimately discovered.

Architect filed a motion to dismiss on three grounds, including the statute of limitations. Contractor filed a motion for summary judgment, based on the statute of limitations. Architect and Contractor each filed a supporting memorandum (Russ Cooper Mot. for SJ; Russ Cooper's Memo in Support; Shope Reno's Memo in Support of MTD or in the Alternative MSJ). On September 15, 2015, the Honorable J.C. Nicholson, Jr. held a hearing on Contractor's and

Architect's motions (Hearing Transcript), which he granted by order dated December 16, 2015 (Order Granting S.J.). Upon receipt of the Trial Court's order, Maria Allwin filed a Rule 59(e) motion on December 29, 2015, citing as grounds: (1) the Order did not consider or apply *Holly Woods Ass'n of Residence Owners v. Hiller*, 392 S.C. 172, 708 S.E.2d 787 (Ct. App. 2011) and *McAlhany v. Carter*, 415 S.C. 54, 57, 781 S.E.2d 105, 107 (Ct. App. 2015) (decided November 12, 2015, after oral arguments in this case); (2) the Order did not consider the Plaintiff's affidavit or her expert's affidavit, which taken in the light most favorable to Maria Allwin, created at least a question of fact as to what damages she knew of, or could have known of through the exercise of reasonable diligence; (3) the Order did not consider the Contractor Russ Cooper's deposition testimony that complete declading of the siding, which led to the discovery of the conditions, was extreme —not required by the exercise of reasonable diligence — and the fact the Architect told Maria Allwin that her experts' scope of repair, which ultimately uncovered many of the defects, was unnecessary. Both of those facts also created an issue of material fact regarding what was required in the exercise of reasonable diligence and whether and when the statute of limitations began to run on the claims Allwin now asserts; (4) The Order made improper factual conclusions that Maria Allwin was "well aware of the alleged defects" and "failed to act with reasonable diligence" when the record presented disputed facts and a dispute as to the conclusion to be drawn from those facts; and (5) the Order improperly granted summary judgment because the facts present at least a scintilla of evidence that some of the conditions and damages for which Maria Allwin sought recovery could not have been known through the exercise of reasonable diligence. (Motion to Alter or Amend filed December 29, 2016). On January 28, 2016, Judge Nicholson denied the Motion to Alter or Amend without rehearing. (Form 4 Order denying Motion to Alter

or Amend). Plaintiff received notice of the Order denying her Motion to Reconsider on February 1, 2016.

Following the Trial Court's denial of Allwin's Rule 59 motion, the matter was appealed to the Court of Appeals which affirmed the Trial Court on January 16, 2019. A Petition for Reconsideration was filed on March 4, 2019 and was denied on April 19, 2019. This Petition for Writ of Certiorari follows.

SUMMARY OF GROUNDS FOR CERTIORARI

The decision by the Court of Appeals, based upon the unique facts of this case, directly conflicts with previously settled law of the Court of Appeals regarding the application of the statute of limitations to previously undiscovered and undiscoverable claims and damages. The facts of the case fit squarely within the Court of Appeals decisions in *Holly Woods Assc. of Residence Owners v. Hiller,* 385 S.C. 344, 682 S.E.2d 818 (Ct. App. 2009) and *McAlhany v. Carter,* 415 S.C. 54, 781 S.E.2d 105 (Ct. App. 2015), in which the Court of Appeals held that whether or not the statute of limitations applied to claims for recently discovered damages, as distinguished from prior discovered damages, is a question of fact. Nevertheless, in this case, the Court of Appeals held that the Plaintiffs claims are barred by the statute of limitations even where there was evidence that the damages she seeks to recover relate to conditions which were unknown and unknowable, through the exercise of reasonable diligence, until 2011. To the extent the Supreme Court has not ruled on these issues, this case presets a novel question of law that the Supreme Court should decide to provide guidance to litigants.

ARGUMENTS

Pursuant to Rule 242, Maria Allwin respectfully requests that the Supreme Court grant her Petition for Writ of Certiorari and reverse the Court of Appeals' and Trial Court's grant of summary judgment based on the statute of limitations.

Arguments

I. The Trial Court and Court of Appeals failed to acknowledge that Allwin is not seeking the recovery of money she spent prior to 2011, and only seeks the recovery of money she spent as part of the Ross Clements/Phillip Smith work which began in 2011.

A critically important fact about this case is that Allwin is not seeking to recover sums she spent before 2011, which total some $2,000,000 (R. pp. 000177-000181). Even though that fact was a central focus of Allwin's Affidavit and argument before the Trial Court and the Court of Appeals, the fact was not referenced anywhere in the Court of Appeals' opinion and, based upon prior Court of Appeals precedent, it is dispositive of the statute of limitations issue.

The application of the statute of limitations could be justified if Allwin was seeking to recover the costs of work that she did in 2001, 2002, or any time before 2010, but she is not. Her claim is strictly limited to the recovery of repair costs she incurred as part of the Ross Clements/Phillip Smith work, which did not begin until 2011. The only way the claim for those damages can be barred by the statute of limitations is if she knew or should have known, as a matter of law, of all of the defects discovered by Clements, and repaired by Smith, before 2011 when those experts began working at her home. Given that Allwin has said she did not know of all of the defects Clements found and Smith repaired prior to 2011, and given that Clements has testified that she could not have known of all of those problems absent a complete declad of the home, and given that Clements and Cooper have both said a complete declad of the home is an extraordinary scope of work, outside of the exercise of reasonable diligence, there is a question of

fact as to whether the statute of limitations bars Allwin's claim. *Holly Woods Assc. of Residence Owners v. Hiller,* 385 S.C. 344, 682 S.E.2d 818 (Ct. App. 2009) and *McAlhany v. Carter,* 415 S.C. 54, 781 S.E.2d 105 (Ct. App. 2015).

II. The Trial Court and Court of Appeals relied on the inapplicable cases of *Dean* and *Barr*, which are inapposite with significant legal and factual differences to this case. In doing so, the Court of Appeals failed to apply *Holly Woods* and *McAlhany*, which, if they are good law, are controlling and compel a reversal of the trial judge's ruling.

The Trial Court and the Court of Appeals relied upon *Dean v. Ruscon,* 321 S.C. 360, 468 S.E.2d 105 (1996) and *Barr v. City of Rock Hill,* 330 S.C. 640, S.E.2d 157 (1998) to establish the law of the statute of limitations. As noted in Allwin's brief and at the lower court, those cases are factually distinguishable and are inapposite. The issue presented here is whether a claim for damages to correct conditions the owner claims she never knew of is barred by the statute of limitations. When the factual scenario involves other conditions that the owner admits she knew of, the question of whether the owner knew or could have known of the new conditions, through the exercise of reasonable diligence, is a question of fact for the jury. The Court of Appeals has decided two cases that are both factually similar and both apply the correct law and analysis relative to the application of the statute of limitations. In both *Holly Woods* and *McAlhany* the Court of Appeals correctly concluded that whether the claims being asserted were or should have been known was a question of fact for the jury. In *Holly Woods* the HOA was aware of and spent money to correct prior problems that related to, or may have been related to, those they were suing over and the Court of Appeals held that that was a question for the jury to decide. In *McAlhany*, the Court of Appeals was faced with issues that the Plaintiff admitted to knowing in 2007. However, since the Plaintiff later recanted that and testified by affidavit, they were not known until

2009, the Court of Appeals reversed the Trial Court, holding that is was up to the jury, not the court, to decide which testimony of the Plaintiffs was more believable.

In this case, both Allwin and Clements testified that after 2011, Clements' investigation revealed conditions that were unknown and could not have been known absent a complete declad of the home. As admitted by Cooper himself, a complete declad was not customary or ordinary and was "extreme", meaning that Allwin's failure the declad before 2011 was not unreasonable. As noted in the brief, even when faced with Clements' concerns in 2011 the architect of record, Shope Reno, even then recommended that Allwin not declad the home as recommended by Clements. (R. p. 001063, line 1-24; R. pp. 000177-000188)

Holly Woods and *McAlhany* are controlling and both cases compel a decision reversing the lower court here and remanding this action for a trial and a jury decision about what, if any, of Allwin's current claim were or should have been known to her through the exercise of reasonable diligence. If there is some question about whether those cases are the law in South Carolina, the Supreme Court should clarify the applicability of those two cases to avoid confusion among litigants and members of the Bar.

III. In applying the law of *Holly Woods* and *McAlhany*, the Court of Appeals ignored the evidence presented by Allwin and Clements which establishes that Clements' work revealed deficiencies the could not have been discovered without a complete de-clad of the home, which Clements and Cooper both said was not required of Allwin in the exercise of reasonable diligence.

The Court of Appeals ignored two aspects of the evidence in this case which, under *Holly Woods* and *McAnally*, compel reversal of the lower court and a remand for trial. First, with respect to *Holly Woods*, the Court of Appeals incorrectly held that, "By contrast, the record here establishes that Allwin failed to present any evidence that the defects she claims to have discovered in 2011 were unrelated to those she had notice of as early as February, 1999." The affidavits of

Clements and Allwin both constitute the evidence the Curt says is lacking. Allwin's affidavit states:

> 9. In 2011, Fuller issued a preliminary report (attached) in which it identified pervasive and systemic original construction deficiencies, meaning defects in the work done by Cooper.
>
> 10. The nature and pervasiveness of the defects identified by Fuller had never been identified by any of the numerous repair contractors who had worked on our home previously; had they been, we would have repaired them.
>
> 13. Notwithstanding SRW's advise and recommendation, I elected to follow the Fuller repair recommendation. In doing so I hired Phillip Smith to act as general contractor for the repair of the home. That work commenced after April 23, 2013, and during that time, the roof and siding were removed as were extensive portions of interior drywall. The removal of those components revealed evidence of extensive and pervasive defects in the original construction of the home, which were unknown to me or, to my knowledge, Jim. Over the years of our ownership of the home, despite paying more that $2,000,000 for repairs and maintenance, no contractor had ever suggested to us that our home had the defects uncovered by the work of Phillip Smith.
>
> 14. The defects uncovered by Smith, which were unobservable to any one prior to the removal of the roof, siding and interior drywall, included evidence of improperly installed flashing, improperly installed building wrap, improperly installed windows and the omission of components such as insulation around windows. Again, there was no way I or anyone else could have observed those deficiencies hidden in the walls and under the roof absent removal of the roof, siding and interior drywall.

(R. pp. 000177-000181)

Clements' Affidavit states:

> 15. While the construction defects FCE observed would have been open and obvious to SRW, as construction was ongoing, it is my professional opinion that as original construction continued and ultimately concluded, the defects could not have been known to the Plaintiff, absent extensive deconstruction efforts.

16. Furthermore, it is my opinion that the level of destructive testing and deconstruction required at the subject residence to uncover latent was unprecedented in my experience as a forensic architect. It would be unreasonable for a homeowner to determine such a level of destructive testing or deconstruction was necessary based on the visual deficiencies observed. In my opinion, the root cause of many of the observed visual deficiencies could not have been fully explained without complete removal of the interior and exterior building components. Additionally, through the deconstruction of the current repair project, we uncovered many instances of previously unknown construction defects and defects that were more pervasive than what was observed during limited destructive testing.

17. Complete removal of interior and exterior building envelope components was required in order to uncover latent construction defects and damages, including but not limited to the following:

1. Reverse-lapped roof underlayment;
2. Improper roof terminations;
3. Water damaged roof sheathing and framing;
4. Unsealed roof-to-wall intersections allowing air intrusion/condensation;
5. Incomplete spray foam insulation in attic and sloped roof areas;
6. Incomplete/missing Tyvek weather-resistive barrier (hereinafter WRB);
7. Reverse-lapped WRB;
8. Improper integration of WRB with window and door flashing;
9. Improper integration of WRB with roof-to-wall flashings;
10. Improper integration of window and door opening head flashings with flexible flashing and/or WRB;
11. Improperly installed wall/cornice flashing;
12. Water damaged wall sheathing, framing, termites;
13. Incomplete asphalt-saturated building felt (WRB) behind stucco;
14. Incomplete perimeter air seal at windows resulting in air intrusion/condensation;
15. Incomplete perimeter seal at windows resulting in bulk water intrusion;
16. Improper integration of window rough opening flashing with pan flashings and WRB;
17. Improper installation of sill pan flashing at windows;
18. Improper installation of WRB at window openings;

19. Improper structural attachment of windows – fasteners missing;

20. Fungal growth/mildew behind window trim;

21. Incomplete perimeter air seal at doors resulting in air intrusion/condensation;

22. Incomplete perimeter seal at doors resulting in bulk water intrusion;

23. Improper integration of door rough opening flashing with pan flashings and WRB;

24. Improper installation of sill pan flashing at doors;

25. Wood sub-flooring improperly installed over flattened back leg of sill pan flashings;

26. Improper installation of WRB at door openings;

27. Fungal grown/mildew behind door trim;

28. Inadequate patio deck-to-wall waterproofing and flashing;

29. Inadequate repairs attempted at patio deck-to-wall waterproofing and flashing;

30. Water damaged wood framing at deck-to-wall intersections;

31. Improper slope of patio at elevated concrete slab (below tile surface); and

32. Insulation missing between Study turret floor and elevated concrete slab.

(R. pp. 000189-000194)

A comparison of the Court of Appeals' factual analysis in *Holly Wood's* is striking. In *Holly Wood's* the Court of Appeals reasoned as follows:

> Specifically, the minutes from an annual meeting of the Association's board meeting from 1991 reveal the Association knew of certain problems in 1991, including a pool leak, drainage around building five, and termite bonding. However, witnesses testified the damages that formed the basis of the Association's 2005 lawsuit stem from different problems than those that existed in 1991.
>
> Mary Louise Reeves, secretary of the Association's Board, testified the Association was only seeking damages that occurred from 2002 to 2005. Reeves testified problems have always existed within the development and some are the same problems, but some are different problems. Richard H. Roubard, a member of the Association's Board since 1998, testified the damage around building five that existed in 1991 was corrected. Roubard testified Gray Engineering came up with a design for a culvert that went over

> the existing road and a head wall and drainage to pick up the run off. According to Roubard, the culvert repair resolved the 1991 drainage issues. Additionally, Roubard explained new problems with drainage arose between 1998 and 2000; however, he claimed the Association also addressed and corrected those problems. Roubard testified the Association learned of the most current drainage problems in September 2002 after a rainstorm.
>
> Steven John Geiger, the Association's expert, also testified as to the damages the Association claimed could have been discovered in 2002 or later. Geiger categorized the condition ***185** of **Holly Woods** into three distinct occurrences contributing to the problems: (1) the general random nature that storm water flows across the site, (2) the presence of poor loose compressible soil, and in some cases soil that contains organic matter underlying the construction; and (3) the open excavation around the eastern and southern perimeters of building five. Geiger testified he knew about the 1991 report, but he testified the 1991 report did not affect the content of his damage report and had nothing to do with his research. Further, he testified that the majority of the damages on **Holly Woods** could be attributable to conditions since 2002.
>
> We find it is a jury question as to whether the damages the Association claimed in 2005 were different from those it experienced in the past. There is evidence from board members and Geiger that the problems, though similar in nature, were different. Therefore, we find the circuit court did not err in denying Appellants' directed verdict motion based on the statute of limitations.

Holly Woods Ass'n of Residence Owners v. Hiller, 392 S.C. 172 708 S.E.2d 787 (Ct. App. 2011)

The *Holly Woods'* case, read with the Allwin and Clements Affidavits, simply cannot be reconciled with the Court of Appeals' ruling in this case. For the same reasons there was a question of fact in *Holly Woods* regarding application of the statute of limitations, there is a question of fact in this case.

Second, with regard to *McAlhany*, the Court of Appeals held, "Allwin failed to present conflicting evidence with respect to the timing of her discovery of the various defects in the home. Indeed, the chronology of Allwin's defect discoveries is fully established in this record." Again,

the Affidavits of Allwin and Clements are evidence that the defects she now seeks recovery for *were not discovered* and *could not have been discovered* prior to 2011. The record which the Court of Appeals refers to is a history of Allwin's knowledge about defects that existed prior to 2011 for which she seeks no recovery. The Court of Appeals' error in this analysis is exemplified by its finding that, "Cowan, Buffington, CSA and Stein independently and repeatedly notified Allwin of original design and construction defects. Buffington and Stein went so far as to inform Allwin of the possible expiration of her claims against RCA." The evidence referred to by the Court of Appeals relates to defects Cowan, Buffington and Stein knew of, which are not the defects Allwin is seeking recovery for now. Cowan, Stein and Buffington could not warn Allwin of claims that were unknown at the time of their involvement and they could express concerns to Allwin about the expiration of claims for money that she would not spend until years later.

Again, if *Holly Woods* and *McAlhany* are the law of South Carolina, then the Supreme Court should correctly apply them to the facts of this case and reverse the Court of Appeals and the Trial Court. If they are not the law, then the Supreme Court should make that determination.

IV. Whether Allwin knew or should have known of the claims she now asserts prior to 2011 is a Question of Fact for the Jury.

The issue before the Court of Appeals is whether the claims Allwin is bringing now, for damages she sustained after 2011, is time-barred by the statute of limitations as a matter of law. Allwin cited *McAlhany* for the discovery rule, which provides that, "Under the discovery rule, the three (3) year clock starts ticking on the date the inured party either knows or should have known by the exercise of reasonable diligence that a cause of action arises from wrongful conduct." This the question before the Court of Appeals was whether Allwin knew, or when, through the exercise of reasonable diligence, should she have known, of the conditions which give rise to the claim she asserts now (as opposed to those she may have asserted much earlier). The evidence establishes

that 1) she did not know of all of the conditions discovered in 2011 (Allwin Affidavit); 2) many if not most of those conditions could not have been discovered without the extensive deconstruction of the building that began to occur in 2011 (Clements Affidavit); and 3) "reasonable diligence" did not require her to deconstruct the building before 2011 (Clements Affidavit, Cooper testimony, Allwin Affidavit regarding what SRW told her in 2011).

V. The Court of Appeals' ruling that the statute of limitations ran, at the latest, in 2012, establishes that the Court of Appeals incorrectly applied the law of the statute of limitations.

The Court of Appeals' ruling "At the very latest, the statute of limitations applicable to Allwin's claims against RCA ran in March of 2012." is erroneous. That ruling is based on the bare fact that Allwin retained counsel in 2009. There is literally no evidence at all about counsel's involvement for Allwin in 2009, other than Allwin's affidavit which is conclusive on that point. That affidavit, at paragraph 7, states:

> In 2009, two years after Jim's death, I contacted attorney Robert Lyles to discuss the ongoing maintenance and repair costs and how to try and manage them. From that meeting, we met with Skip Lewis, an engineer recommended by Mr. Lyles, to do a property condition assessment and to develop a life cycle repair for maintenance of our home. The plan was to budget for the ongoing costs to maintain the home. That was never done.

There is no evidence that there was ever any discussion between Allwin and counsel about pursuit of claims against RCA or SRW at that time or about the recovery of the sums Allwin had already paid to maintain and repair the home. She was trying to manage maintenance costs and received a recommendation concerning an expert on a maintenance and repair plan for the home, which she never got. Those facts alone cannot establish that the statute of limitations began to run as a matter of law. If they do, building owners must be reluctant to hire counsel for issues involving

maintenance and repair of their home for fear that hiring counsel starts the statute of limitations running on any claim the owner may have, whether known or not.

VI. Like the Trial Court, the Court of Appeals failed to consider the evidence in the light most favorable to Allwin.

Like the Trial Court, the Court of Appeals has taken selective evidence that was presented and held that, "...the chronology of Allwin's defect discoveries is fully established in this record." In doing so, the Court of Appeals has either ignored or disregarded the Allwin and Clements Affidavits but also ignored other evidence that supports Allwin with respect to what she knew and when she knew it.

The law of South Carolina is clear on the standard for granting summary judgment. An appellate court reviews a grant of summary judgment applying the same well-established standard as the trial court pursuant to Rule 56, SCRCP. *See McAlhany v. Carter*, 415 S.C. 54, 62, 781 S.E.2d 105, 110 (Ct. App. 2015), reh'g denied (Jan. 28, 2016). Summary judgment should only be granted when it is clear there is no dispute concerning either the facts ***or*** the inference to be drawn from those facts. *Id.* "In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn from the evidence in the light most favorable to the non-moving party." *Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 327, 534 S.E.2d 672, 675 (2000). In evaluating a motion for summary judgment, an appellate court is required "to liberally construe the record in favor of the nonmoving party and give the nonmoving party the benefit of all favorable inferences that might reasonably be drawn therefrom." *Estes v. Roper Temp. Servs., Inc.*, 304 S.C. 120, 121, 403 S.E.2d 157, 158 (Ct. App. 1991). Summary judgment is a "drastic remedy" that should be "cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues." *Murphy v. Tyndall*, 384 S.C. 50, 54, 681 S.E.2d 28, 30 (Ct. App. 2009) (*quoting Carolina All. for Fair Employment v. S.*

Carolina Dep't of Labor, Licensing, & Regulation, 337 S.C. 476, 485, 523 S.E.2d 795, 799 (Ct. App. 1999).

There are a number of instances in which the evidence is not viewed in the light most favorable to Allwin. For example, as part of its efforts, Buffington Home hired an engineering firm, CSA, to survey the home. (R. pp. 000017; R. pp. 001155-001171). Portions of the language of CSA's report, which are unfavorable to Maria Allwin, are included in the Order, but its ultimate conclusion and portions of the report that are favorable to Allwin are excluded. (R. pp. 000017). The Order does not include that CSA identified the purpose of its survey was to determine the sources of "isolated areas of damage and fungal growth" in the Home. (R. pp. 001156). The Order does not include that CSA notes "slight interior negative pressure" which it appears to attribute to the air conditioning system, but also notes that wind can cause building envelope pressure differences particularly at ocean front locations. (R. pp. 001155-001171, Allwin 00945). The final summary is also not included in the Order. CSA surveyed the Home on two days (June 30, 2003 and July 17, 2003) and in summary concluded: "In summary, outside air infiltration is the dominant source of moisture in the home and can be resolved by sealing air leakage paths and pressuring the home. Isolated cases of water damage can be investigated and repaired on an individual basis." (R. pp. 001164, Allwin 00948).

As noted in the Order, Maria Allwin hired Victoria Stein. A detailed October 2008 report prepared by Ms. Stein after an extensive cataloging of the home's history noted that "it [was her] opinion that the major contributing factor for the high humidity that is contributing to fungal growth is the installation of the 40-ton chiller system." (R. pp. 001440-001449). While the Court of Appeals' order notes that emails between Ms. Stein and Maria Allwin discussed "going down the legal road" at that time, Ms. Stein's report actually recommends in its "Considerations for the

Future" that Ms. Allwin "seek legal council to recoup monetary past and future costs on chiller related issues." (R. pp. 000028, R. pp. 001440-001449; R. pp. 001366). Thus, the reference is related to the HVAC issues, which did not involve Russ Cooper.

CONCLUSION

For the reasons set forth above, Appellant respectfully requests that the Supreme Court grant Appellants Petition for writ of Certiorari and reverse the Court of Appeals and the Trial Court's grant of summary judgment and remand this matter for a trial on the merits.

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PROOF OF SERVICE

I certify that I have served **Appellant's Petition for a Writ of Certiorari** on counsel for the Respondent by depositing a copy in the United States Mail, First Class postage prepaid, this 20th day of May, 2019, addressed to the following:

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May 20, 2019

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